COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 456 of 2001
(Old No. 447/1997)

U.P.S.R.T.C. … **Appellant.**

Versus

Smt. Pushpa Dalakoti
And others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award dated 21.6.1997, passed in M.A.C. Case No. 527 of 1993, Smt. Pushpa Dalakoti and others Vs. U.P.S.R.T.C., by Motor Accident Claims Tribunal/III Addl. District Judge, Nainital ***(in short the Tribunal)***, whereby the learned Tribunal has allowed the claim petition and has awarded Rs.2,88,000/- as compensation along with interest @ 12% per annum, as mentioned in the impugned order, in favour of the claimant-respondents under Section 166 of the Act as against the appellant. Aggrieved, the U.P.S.R.T.C.-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was not the result of rash and negligent driving of driver of the bus in question; but on the part of driver of the Truck, and mechanical failure of the brake and the Tribunal has failed to appreciate the evidence on record and the compensation awarded is excessive and against law.

Brief facts of the case are that on 4-9-1993, Lalit Mohan Dalakoti was travelling by U.P.S.R.T.C. bus No. U.P.P.-4216 from Haldwani to Almora. When the bus reached near Beer

Bhatti, due to rash and negligent driving by the driver of the bus, the bus fell into a ***Khadd*** with the result many passengers including Lalit Mohan Dalakoti sustained injuries and Lalit Mohan ***(the deceased)*** succumbed to his injuries. The deceased was aged 44 years and he was running a transport company. He was income tax payee and his annual income was Rs. 1,14,432/-. Hence, the claim petition has been filed.

The O.P. U.P.S.R.T.C. contested the claim petition by filing written statement. It has been asserted that the dependents of the deceased were paid Rs. 55,000/-. It has also been stated that at the place of accident, the weather was cloudy and it was raining. The driver came to know that the road ahead was blocked, therefore, in order to take the bus to Almora via Nainital, the driver turned the bus. This act is alleged to have been done on the request of the passengers. The bus was being driven cautiously by the driver. At the place of accident, there was a pit full of water on the left side of the road and towards left there were piles of sand pieces. On the mean time, a truck came from the opposite direction. The bus driver gave pass to the truck, but a wheel of the bus went inside the pit with the result the bus fell into a ***Khadd.*** The accident was the result of rains and clouds.

The learned Tribunal framed two Issues in the case. **Issue No.1** related to rash and negligent driving by the driver of the vehicle in question. **Issue No. 2** related to the relief and compensation. After considering the evidence, both oral and documentary on record, the learned Tribunal found that the accident was caused due to rash and negligent driving by the driver of the bus in question. The Tribunal has decided Issue No.1 in favour of the claimants. On Issue No.2, the Tribunal after considering the evidence found that the deceased used to earn Rs. 36,000/- per annum, therefore, after deducting 1/3rd of it, annual loss of dependency was determined at Rs. 24,000/-. Considering the circumstances of the case, the Tribunal has applied multiplier of

12 for determining the total compensation. Ultimately, compensation worth Rs. 2,88,000/- along with interest @ 12% per annum has been awarded in favour of the claimants against the appellant U.P.S.R.T.C. It has also been directed that the amount of Rs.55,000/- paid by the appellant to the claimants shall be adjusted towards payment of compensation.

We have heard learned counsel for the appellant, Mr. A.N.Sharma, as well as learned counsel for the claimant-respondents, Mr. Anil Dabral, and have carefully gone through the entire material on record including the impugned judgment and award.

It has been submitted on behalf of the appellant that the accident in question was not the result of rash and negligent driving on the part of the driver of the offending bus, therefore, the finding of the learned Tribunal are not based on proper appraisal of evidence. We have perused the testimony of P.W.2, Jasbir Singh, who have been produced as eye witness of the accident. This witness has clearly stated that on 4.9.93, he was coming from Haldwani to Almora by the bus in question and due to rash and negligent driving by the driver of the bus, the bus fell into a ***Khadd,*** thereby as many as 17 persons sustained grievous injuries and died on the spot. This witness was cross-examined but nothing could be drawn in favour of the O.P.-appellant. O.P.-appellant has not adduced any oral or documentary evidence. The Opposite Party-appellant has not even adduced any evidence to show that the accident in question was result of mechanical failure of steering. The learned Tribunal has considered all aspect of the case and the finding of rash and negligent driving by the bus driver does not require any interference by this Court.

It has been next argued on behalf of the appellant that the dependency has not been properly determined by the Tribunal and multiplier of 12 has been wrongly applied to work out the total

amount of compensation. Paper no. 28-C/4 is a document showing the income-tax return of the deceased for assessment year 1992-93. The deceased had shown his annual income worth Rs. 35,290/-. The Tribunal has rightly considered all the relevant documents on record to find out the annual income of the deceased. Widow of the deceased was examined as P.W.1 and she has stated the age of the deceased a t the time of his death as 44 years. She has stated that the deceased used to spend Rs. 7-8 thousand per month on the family. In the claim petition in column no.6, the monthly income of the deceased has been shown to be Rs. 9,536/-. In our view, the Tribunal has rightly held the annual income of the deceased at Rs. 36,000/- on the basis of income tax papers of the deceased and after deducting 1/3rd of it towards personal expenses of the deceased, annual loss of dependency was determined at Rs. 24,000/-. The learned counsel for the appellant could not point out as to how this income is not supported by the evidence. Deceased was undisputedly aged about 44 years, therefore, multiplier of **12** cannot be said to be unreasonable in the circumstances of the present case. We do not find any infirmity or illegality in the judgment and award under appeal. The appeal fails on merit.

The appeal is dismissed. The judgment and award, under appeal, in upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP